

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: VERASUN CHARLES CITY, LLC Charles City, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2008-AQ-08
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TO: Todd Church, Vice President VeraSun Charles City, LLC 100 22 nd Avenue Brookings, South Dakota 57006	CT Corporation System, Registered Agent VeraSun Charles City, LLC 2222 Grand Avenue Des Moines, Iowa 50312
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I. SUMMARY

This administrative consent order is entered into between VeraSun Charles City, LLC (VeraSun) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving air quality permitting violations at VeraSun's Charles City facility. The parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Bryan Bunton
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-0363

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part;

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and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. VeraSun is an ethanol production facility located in Charles City, Iowa. The facility has the capacity to produce 110 million gallons of ethanol per year and also produces 350,000 tons of distillers' grains per year. The facility processes approximately 39 million bushels of corn per year. The facility employs approximately 60 people and is designed to run continuously, 24 hours a day, 7 days a week throughout the year.

2. On August 31, 2005, VeraSun submitted construction permit applications for various emission points at its proposed facility in Charles City. On October 25, 2005, DNR issued Air Quality Construction Permit Numbers 05-A-718 through 05-A-735 to VeraSun. On March 20, 2007, VeraSun commenced grain receiving operations and on April 11, 2007, VeraSun commenced ethanol production operation.

3. On May 21, 2007, VeraSun submitted a construction permit modification request for Air Quality Construction Permit #05-A-719 (EP S20). VeraSun indicated that the number and capacity of the grain storage silos installed were greater than initially permitted. Additionally there were some units that were permitted but not constructed and some units there were constructed but not included in the original permit application. The following table is a comparison of the emission units included in the original permit application and the emission units as constructed:

Original Permit Application				As Constructed	
EU#	Permit #	Description	Capacity	Description	Capacity
07	05-A-719	Corn Dump Pit/Auger	24,000 bu/hr	Truck Receiving Dump Pit & Transfer Drag #1	20,000 bu/hr
08	05-A-719	Corn Elevator	24,000 bu/hr	Receiving Leg #1	20,000 bu/hr
09	05-A-719	Fill Conveyor	24,000 bu/hr	Silo Center Fill Conveyor #1	20,000 bu/hr
10	05-A-719	Corn Silo #1	250,000 bu	Grain Silo #1	523,913 bu
11	05-A-719	Emptying Conveyor	24,000 bu/hr	Silo Reclaim Conveyor #1	20,000 bu/hr
12	05-A-719	Corn Elevator #2	24,000 bu/hr	Not Constructed	--
13	05-A-719	Corn Dump Pit/Auger	24,000 bu/hr	Truck Receiving Dump Pit & Transfer Drag #2	20,000 bu/hr
14	05-A-719	Corn Elevator #1	24,000 bu/hr	Receiving Leg #2	20,000 bu/hr
15	05-A-719	Fill Conveyor	24,000 bu/hr	Silo Center Fill Conveyor #2	20,000 bu/hr

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16	05-A-719	Corn Silo #2	250,000 bu	Grain Silo #2	523,913 bu
17	05-A-719	Emptying Conveyor	24,000 bu/hr	Silo Reclaim Conveyor #2	6,000 bu/hr
18	05-A-719	Corn Elevator #2	24,00 bu/hr	Not Constructed	--
19	05-A-719	Hammermill Feed	4,800 bu/hr	Not Constructed	--
61	05-A-719	Not Originally Included	--	Grain Silo #3	88,692 bu
62	05-A-719	Not Originally Included	--	Grain Silo #4	523,913 bu
63	05-A-719	Not Originally Included	--	Grain Silo #5	523,913 bu
64	05-A-719	Not Originally Included	--	Rail Receiving Dump Pit & Drag Conveyor	40,000 bu/hr
65	05-A-719	Not Originally Included	--	Silo Reclaim Conveyor #3	6,000 bu/hr
66	05-A-719	Not Originally Included	--	Silo Reclaim Conveyor #4	6,000 bu/hr
67	05-A-719	Not Originally Included	--	Silo Reclaim Conveyor #5	6,000 bu/hr
68	05-A-719	Not Originally Included	--	Hammermill Feed Silo	37,000 bu/hr

On June 22, 2007, DNR issued a Notice of Violation letter to VeraSun for failing to obtain a construction permit prior to modifying the emission units associated with Air Quality Construction Permit #05-A-719. The Notice of Violation letter was later rescinded and a new letter sent on November 29, 2007 stated the proper violation of failing to obtain supplement permits for the changes made to the emission units associated with Air Quality Construction Permit #05-A-719.

4. On October 8, 2007, VeraSun submitted modification requests for the following Air Quality Construction Permits: #05-A-718, #05-A-719-S1, #05-A-720, #05-A-721, #05-A-722, #05-A-723, #05-A-724, #05-A-727, #05-A-728, #05-A-729, #05-A-730, #05-A-731, and #05-A-732. VeraSun indicated that several of the emission units associated with the construction permits had been constructed differently than had been permitted or had not been included in the original permit. The following table is a comparison of the emission units as originally permitted and the emission units as constructed:

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Original Permit				As Constructed	
EU#	Permit #	Description	Capacity	Description	Capacity
03 & 04	05-A-718	Boilers	155 MMBtu/hr	Boilers	165 MMBtu/hr
24	05-A-718	Mixer	1,500 gallons/ minute	Mixer	1,550 gallons/minute
25	05-A-718	Slurry Tank #1	20,000 gallons	Slurry Tank #1	25,000 gallons
26	05-A-718	Slurry Tank #2	20,000 gallons	Slurry Tank #2	29,000 gallons
27	05-A-718	Flash Tank	4,000 gallons	Flash Tank	4,500 gallons
29	05-A-718	Liquefaction Tank #1	14,000 gallons	Liquefaction Tank #1	128,400 gallons
30	05-A-718	Liquefaction Tank #2	14,000 gallons	Liquefaction Tank #2	128,400 gallons
31	05-A-718	Liquefaction Tank #3	14,000 gallons	Liquefaction Tank #3	Not Constructed
32	05-A-718	Liquefaction Tank #4	14,000 gallons	Liquefaction Tank #4	Not Constructed
33 & 34	05-A-718	Yeast Tanks #1-#2	14,000 gallons	Yeast Tanks #1- #2	20,000 gallons
43	05-A-718	Beer Column	130,000,000 gallons/year	Beer Column	1,600 gallons/minute
44	05-A-718	Side Stripper	130,000 gallons/year	Side Stripper	215 gallons/minute
	05-A-718	Stack Parameters	120 inches in diameter	Stack Parameters	132 inches in diameter
	05-A-719-S1	Stack Opening	42 inches in diameter	Stack Opening	43 ¼ inches in diameter
	05-A-719-S1	Exhaust Flow Rate	37,800 scfm	Exhaust Flow Rate	34,378 scfm
20, 21, 22, & 23	05-A-720	Hammermills #1-#4	1,200 bu/hr	Hammermills #1- #4	1,500 bu/hr
	05-A-720	Stack Opening	42 inches in diameter	Stack Opening	37 ¾ inches in diameter
	05-A-720	Exhaust Flow Rate	38,000 scfm	Exhaust Flow Rate	24,000 scfm
	05-A-721	Stack	28 inches in	Stack Opening	29 inches in

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		Opening	diameter		diameter
	05-A-721	Exhaust Flow Rate	12,000 scfm	Exhaust Flow Rate	13,400 scfm
49 & 50	05-A-722	DDGS Cooling and Storage Drag	64 tons/hr	DDGS Cooling and Storage Drag	50 tons/hr
51	05-A-722	DDGS Storage Building	9,000 tons	DDGS Storage Building	1,000 tons
53, 54, 55, & 56	05-A-722	DDGS Recirc/ Loadout Leg, DDGS Topfill Drag, DDGS Loadout Drag, Truck Load Spout	200 tons/hr	DDGS Recirc/Loadout Leg, DDGS Topfill Drag, DDGS Loadout Drag, Truck Load Spout	400 tons/hr
69-78	05-A-722	Not in original permit	--	10 EUs added	400 ton/hr
	05-A-722	Stack Opening	28 inches in diameter	Stack Opening	23 ¾ inches in diameter
	05-A-723	Exhaust Flow Rate	10,700 scfm	Exhaust Flow Rate	10,600 scfm
	05-A-723	Stack Height	30 feet	Stack Height	21 feet
	05-A-723	Stack Opening	17 inches in diameter	Stack Opening	24 inches in diameter
	05-A-724	Stack Height	18 feet	Stack Height	40 feet
	05-A-724	Stack Opening	48 inches by 48 inches	Stack Opening	42 inches in diameter
	05-A-724	Exhaust Flow Rate	12,304 scfm	Exhaust Flow Rate	20,000 scfm
TK 001	05-A-727	190 Proof Storage Tank #1	200,000 gallons	190 Proof Storage Tank #1	188,000 gallons
TK 002	05-A-728	200 Proof Storage Tank #1	200,000 gallons	200 Proof Storage Tank #1	188,000 gallons
TK 003	05-A-729	Denaturant Tank #1	200,000 gallons	Denaturant Tank #1	188,000 gallons
TK 004	05-A-730	Denatured Ethanol Tank #1	1,500,000 gallons	Denatured Ethanol Tank #1	1,447,000 gallons
TK 005	05-A-731	Denatured Ethanol Tank	1,500,000 gallons	Denatured Ethanol Tank #2	1,447,000 gallons

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		#2			
TK 006	05-A-732	Corrosion Inhibitor Tank	2,200 gallon	Corrosion Inhibitor Tank	2,300 gallons

On November 28, 2007, DNR issued a Notice of Violation letter to VeraSun for failing to obtain supplemental permits for the changes listed in the table above. Permit modifications for the permits noted in the table above were issued on December 20, 2007.

5. VeraSun has failed to comply with construction permits in the past. Air Quality Construction Permit #05-A-733 required the haul roads to be paved prior to operations commencing at the facility. In April 2007, VeraSun notified the DNR that it had commenced operations prior to having the haul roads paved. VeraSun continued operations with unpaved haul roads until June 1, 2007.

6. On March 31, 2007, representatives of DNR and VeraSun met to discuss the issues that are the subject of this administrative consent order. Among other things, VeraSun indicated that, as it relates to the haul road issue described above, VeraSun incurred significant cost in mitigation measures until the roads were paved. The parties also acknowledge that VeraSun actively evaluated its compliance status, performed a detailed comparison of the permit with actual plant conditions, and affirmatively presented those findings (which are the subject of this order) to the DNR.

IV. CONCLUSIONS OF LAW

1. 567 IAC 22.3(3)(e) states that if changes in the final plan and specifications are proposed by the permittee after a construction permit has been issued, a supplemental permit shall be issued. VeraSun failed to obtain supplement construction permits prior to modifying existing equipment or initiating new construction on numerous emission units listed in Section III, Paragraphs 3 and 5. The above-mentioned facts indicate noncompliance with this provision.

2. 567 IAC 22.3(3) provides that a construction permit may be issued subject to conditions which shall be specified in writing. Condition 3 of Air Quality Construction Permit Numbers 05-A-718, 05-A-719-S1, 05-A-720, 05-A-721, 05-A-722, 05-A-723, 05-A-724, 05-A-726-S1, 05-A-727, 05-A-728, 05-A-729, 05-A-730, 05-A-731, and 05-A-732 contains the following requirement: "it shall be the responsibility of the owner to ensure that construction conforms to the final plans and specifications as submitted and that adequate operation and maintenance is provided to ensure that no condition of air pollution is created. A supplement to this permit shall be obtained if the owner proposed changes to the final submitted plans and specifications." VeraSun failed to obtain supplement construction permits after making changes to the final submitted plans and specifications. The above-mentioned facts indicate noncompliance with Condition 3 in the permits listed above.

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V. ORDER

THEREFORE, the DNR orders and VeraSun agrees to the following:

1. VeraSun shall pay a penalty in the amount of \$9,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$9,000.00. The administrative penalty is determined as follows:

Economic Benefit – VeraSun received a significant economic benefit by failing to obtain supplemental permits for numerous emission units. This failure allowed VeraSun to operate without taking the time required to submit and obtain modified construction permits. The economic benefit to the facility for the above-mentioned violations is estimated to be at least \$3,000.00 and that amount is being assessed for this factor.

Gravity of the Violation -- One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. VeraSun's failure to obtain supplemental permits prevented the DNR from being able to evaluate the changes prior to the modifications. The violations cited in this administrative consent order threaten the integrity of the air quality program in that an integral part of the program is being able to evaluate emission units prior to construction to ensure compliance with all applicable rules and regulations. For these reasons, \$3,000.00 is being assessed for this factor.

Culpability -- VeraSun has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. The construction permits issued to the facility contained the requirement to obtain supplemental permits. For these reasons, \$3,000.00 is assessed for this factor.


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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of VeraSun. For that reason, VeraSun waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in section "IV. Conclusions of Law" of this administrative consent order. The DNR reserves the right to bring an enforcement action or to request that the Attorney General initiate legal action to address other violations not described in Section "IV Conclusions of Law" of the administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 25 day of
April, 2008



VERASUN CHARLES CITY, LLC

Dated this 11 day of
April, 2008

Barb Stock (#34-01-040); Kelli Book; Bryan Bunton; DNR Field Office 2; EPA; VII.A.2